TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1960

No. 64

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER,

vs.

NATIONAL LABOR RELATIONS BOARD.

No. 85

NATIONAL LABOR RELATIONS BOARD, PETITIONER,

vs.

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 64 PETITION FOR CERTIORARI FILED MARCH 28, 1960

NO. 83 PETITION FOR CERTIORARI FILED MAY 11, 1960

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,794

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD, *Respondent.*

On Petition for Review of An Order of the National Labor Relations Board

INDEX TO JOINT APPENDIX

PREHEARING ORDER

Counsel for the parties in the above-entitled case having submitted their stipulation dated March 5, 1959, and the stipulation having been considered, the stipulation of the parties is hereby approved, and it is

ORDERED that the parties proceed according to the stipulation and that this order and the stipulation dated March 5, 1959, be printed in the joint appendix.

Dated: March 5, 1959.

PREHEARING CONFERENCE STIPULATION

Pursuant to Rule 38 (k) of the Rules of this Court, the parties, subject to the approval of the Court, do hereby stipulate and agree as follows with respect to the issues, the dates for the filing of the briefs and joint appendix, and the contents of the joint appendix:

I.

Statement of the Issues

1. Whether the Board properly concluded that the exclusive hiring agreement between the petitioner and an employer on its face constituted unlawful encouragement of union membership in violation of Section 8 (b) (2) and unlawful coercion of employees in violation of Section 8 (b) (1) (A) of the National Labor Relations Act, as amended.

2. Whether the Board properly concluded that the petitioner caused the discharge of Lester Slater in violation of Section 8 (b) (2) and 8 (b) (1) (A) of the Act.

3. Whether the Board order requiring the petitioner and an employer to make Slater whole for any loss suffered by him by reason of the discrimination against him and also to

reimburse employees for monies collected pursuant to the illegal hiring provision is valid and proper.

It is the petitioner's position, but not the Board's, that a further issue is presented and that it should follow #1 above, namely:

Whether the Board is authorized under the Act to require to be included in an exclusive hiring agreement as a condition of its legality the following safeguards:

(1) A provision stating that selection of applicants for jobs shall be on a non-discriminatory basis?

(2) A provision giving the employer the absolute right to reject any applicant?

(3) A provision requiring the parties to the hiring agreement to post notices thereof, including notices of all provisions relating to the functioning of the agreement?

II.

The Briefs and Joint Appendix to Briefs

1. The petitioner will file and serve its opening brief on or before April 22, 1959. The Board will file its brief on or before May 25, 1959. The petitioner will file and serve its reply brief, if any, on or before June 15, 1959.

2. The joint appendix will consist of such portions of the record in Case No. 21-CB-783 before the Board as the parties hereto shall respectively designate. The joint appendix will be printed by a printer mutually agreed upon, and will be filed with the petitioner's opening brief.

3. It is further agreed that any party and the Court, at or following the hearing in the case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed, or otherwise reproduced, it being understood that any portions of the record thus re-

ferred to will be printed in a supplemental joint appendix if the Court directs the same to be printed.

/s/ HERBERT S. THATCHER
Counsel for Petitioner

/s/ MARCEL MALLET-PREVOST
Assistant General Counsel
Counsel for
National Labor Relations
Board

Dated this 5th day of March 1959,
at Washington, D. C.

BEFORE THE NATIONAL LABOR RELATIONS BOARD
TWENTY-FIRST REGION

In the Matter of:
LOS ANGELES-SEATTLE MOTOR EXPRESS, INCORPORATED,
and
LESTER H. SLATER, An Individual, Case No. 21-CA-2416
and
CALIFORNIA TRUCKING ASSOCIATION, INC.,
Party to the Contract

In the Matter of:
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 357, AFL-CIO,
and
LESTER H. SLATER, An Individual, Case No. 21-CB-783
and
CALIFORNIA TRUCKING ASSOCIATION, INC.,
Party to the Contract

111 West Seventh Street,
Los Angeles, California,
Monday, August 27, 1956.

Pursuant to notice, the above-entitled matter came on for hearing at 10:00 o'clock, a.m.

BEFORE:
WILLIAM E. SPENCER, Trial Examiner.

APPEARANCES:
PAUL WEIL, Esq., 111 West Seventh Street, Los Angeles, California, appearing on behalf of the General Counsel of the National Labor Relations Board.

STEVENSON & HACKLER, By: CHARLES K. HACKLER, Esq.,	846 South Union Avenue, Los Angeles 17, California;
and	
BARNEY VOLKOFF,	Business Representative, 846 South Union Avenue, Los Angeles 17, California, appearing on behalf of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 357, AFL-CIO.
GLANZ & RUSSELL, By: THEODORE W. RUSSELL, Esq.,	639 South Spring Street, Los Angeles 14, California, appearing on behalf of Los Angeles-Seattle Motor Express, Incorporated.
ARLO D. POE, Esq.,	639 South Spring Street, Los Angeles 14, California, appearing on behalf of California Trucking Associations, Inc.

4 **PROCEEDINGS**

Trial Examiner Spencer: The hearing is in order.

This is a hearing before the National Labor Relations Board in the matter of Los Angeles-Seattle Motor Express, Incorporated, and Lester H. Slater, An Individual, and California Trucking Association, Inc., Party to the Contract; International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 357, AFL-CIO, and Lester H. Slater, An Individual, and California Trucking Associations, Inc., Party to the Contract, Case No. 21-CA-2416 and 21-CB-783.

The Trial Examiner appearing for the National Labor Relations Board is William E. Spencer.

Appearing for the General Counsel is Paul Weil, Esquire.

Appearing for International Brotherhood of Teamsters, et al, Stevenson & Hackler by Charles K. Hackler, Los Angeles, California, and Barney Volkoff, Los Angeles, California.

Are there further appearances?

Mr. Russell: On behalf of Los Angeles-Seattle Motor Express, Incorporated, Glanz & Russel, by Theodore W. Russell.

. . . . . .

My address is 639 South Spring Street, Los Angeles 14, California.

Trial Examiner: Appearing for the California Trucking Associations, Inc., Arlo D. Poe, Esquire, 639 South Spring Street, Los Angeles.

. . . . . .

E. J. McCarthy

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

. . . . . .

Q. By whom are you employed? A. California Trucking Associations.

. . . . . .

Q. What is your position with the Association? A. Director of Labor Relations.

. . . . . .

Q. Did you have anything to do with the contract which is known as the Master Dry Freight Agreement or Master Labor Agreement between California Trucking Associations, Inc. and International Brotherhood of Teamsters,

Chauffeurs, Warehousemen and Helpers of America, Joint Council of Teamsters No. 42? A. I participated to some extent, yes.

• • • • • • • • • • •

Q. Having specific reference to Section 1 of that contract, providing for the dispatch by the union on a seniority basis of employees, where senior employees are available, does your Association have any machinery set up
35 by which it determines the seniority of employees? A. Not on those casual employees, no.

Q. Are records kept of the collection of seniority by employees in the casual categories—by the Association? A. No.

• • • • • • • • • • •

Q. Do you or does anyone working under you consult with the respondent union here concerning the union's determination of seniority among casual laborers? A. No.

Q. Do you consult with the union concerning, that is, the respondent union, concerning its placement of names of employees on the seniority list? A. No.

Q. Do you consult with it concerning its striking of the names of employees from the seniority list? A. No.

Q. Is a copy of the seniority list, if such there be, furnished to you by the union? A. No.

• • • • • • • • • • •

41 Cross Examination

• • • • • • • • • • •

Q. About how many members do you have in your Association? A. Membership in the Association is approximately a thousand truck operators.

• • • • • • • • • • •

Q. Now, of those members, approximately how many at this time do you have these powers of attorney from to

enter into collective bargaining agreements? A. Approximately 50 percent of them.

. . . . . .

42 Q. What geographical area approximately is covered by the Master Labor Agreement? A. Master Labor Agreement covers seven California territories, which would be approximately from San Luis Obispo and Bakersfield south to the Mexican Border.

. . . . . .

44 Q. To your knowledge, Local 357 of the Teamsters in Los Angeles has jurisdiction over what general types of employees? A. Freight handlers and office employees.

. . . . . .

47 Trial Examiner:

Does the contract define "casual employee"?

The Witness: No, it does not.

. . . . . .

Q. Are you familiar with whether there is a practice, as between the members of the Association and the unions that are bound by the agreement, as to what a casual is in that connection? A. I know what the accepted practice is.

Q. Would you tell me what it is? A. A casual employee is one who is hired for a portion of a day or a full day.

Q. So that at the most his term of employment would be one day? A. Yes.

Q. And has it been the practice, do you know, in
48 the industry that if he is going to be used on more than one successive day that he will be rehired each succeeding day? In other words, assume that the company has work requiring casual help for several days running: Has it been the practice that the casuals will be hired each day then as that work develops? A. Yes.

Trial Examiner: Just to be sure we are entirely clear on

that, you hire Employee A for one full day. He is a casual employee because he is hired for only one day, is that correct?

The Witness: Yes.

Trial Examiner: Then at the end of that day you find there is work for Employee A the next day. Do you hire him all over again for the next day?

The Witness: Under the terms of the collective bargaining agreement, yes.

Trial Examiner: That would keep him in the status of casual employee?

The Witness: That's right.

Q. (By Mr. Russell) Has that been the practice as you have found it in the industry? A. There have been some exceptions to that, as I understand the method of dispatching from the hiring hall, where an employer would call the hall, advising them that they needed an individual for two, three, four days a week; the dispatch from the hall would be on that basis.

. . . . . .

49 Q. (By Mr. Russell) Can you tell me, since May 1 of 1955, has there been an interruption of work gen-
50 erally in the industry in this area by the members of your Association? A. Yes.

. . . . . .

Q. About when did it begin and about what date did it end, as a general interruption? A. Well, it was in the latter part of May, and it terminated approximately the middle of June, as I recall.

. . . . . .

52 Re-cross Examination

. . . . . .

54 Q. Are you familiar with the practice that employers who have freight, either on their docks or warehouses to be moved or to be unloaded from freight

cars or otherwise, will call the dispatch hall on short notice and tell the number of casual laborers they need, and that the hall will make an effort to send the number asked for, in normal operations? A. It is my understanding.

. . . . . .

57 **Lester H. Slater**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

. . . . . .

Q. What do you do for a living? A. A freight handler.

Q. Have you ever been employed by Los Angeles-Seattle Motor Express? A. Yes.

. . . . . .

Q. Who hired you? A. Bill Simpson.

. . . . . .

58 Q. Who was he? A. Superintendent of the dock and trucks.

. . . . . .

Q. Now, will you tell us what was said by each of

59 you in this conversation? A. Well, I went to him with a letter from John Annand. I showed him the letter, and he took it on into the office.

Q. What did you say, you must have said something before? A. Well, I just showed him the letter and he read it. Then he says, "Just a minute," and he took it on in the office. He come back out, he says, "Yes, I will hire you. But go and have a photostatic copy made of this letter and bring it back to me." I did, so I brought it back to him and he put me on that night at 5:00 o'clock.

. . . . . .

73 Q. While you were employed by the Los Angeles-Seattle Motor Express, did you have any contact with any representative of the union? A. Yes.

• • • • • • • • • • •

Q. Do you know whom? A. Well, he is a business agent. I can't recall his name, but his first name is Vic.

• • • • • • • • • • •

74 Q. Tell us what you and Vic said to each other, if any thing. A. He come up to me, he asked me if I had my card. I says no. He asked me what rights I had there. I said, "I have a letter that says I can work here."

I can't recall how it happened, but I sent him over to see Bill Simpson, and that's the last I seen him.

Q. Were you terminated after that? A. No.

Q. Were you discharged after that? A. I was discharged a few days afterward.

Q. By whom? A. By Oscar Nielsen.

Q. Who is Oscar Nielsen? A. Night foreman.

• • • • • • • • • • •

75 Q. Now, will you tell us what you said to each other; if anything? A. Well, he says, "I can't use
76 you now until you get this straightened out with the union. Then come back; we will put you to work."

• • • • • • • • • • •

Q. Did you have any further conversation with any officer of the company or with any representative of the company, that you know of? A. Mrs. Cody and I, my landlady, and talked to Bill Simpson.

• • • • • • • • • • •

77 Q. (By Mr. Weil) Just tell us as best you can what was said. A. Well, I know Mrs. Cody went in to talk to him. He says he is sorry the way they have been

acting, doing things, and he'd like to see me get it straightened out because he'd like to have me come back and work with him.

. . . . . .

79 Q. (By Mr Weil) As I recall, to go back, your testimony was that you saw Mr. Volkoff before you saw Mr. Simpson? A. We were supposed to see John Annand that Monday.

. . . . . .

80 Q. Now, you state you were supposed to see Mr. Annand. Did you have an appointment?

. . . . . .

A. I called him up to his home on Sunday and asked him when he was able for me to see him. He says, "Come in Monday morning at 9:00 o'clock."

. . . . . .

Q. Did you see Mr. Annand? A. No.

Q. What happened? A. Well, the lady at the desk up there told us Barney Volkoff would take care of it, so she sent us down to him.

Q. Did you go down to see Mr. Volkoff? A. Yes.

81 Q. Was that in the same building? A. Yes.

Q. Where is that building located, do you know? A. It is on Union Street, Ninth and Union.

Q. Now, is that near where—anywhere near the hiring hall? A. No.

Q. Where is the hiring hall located? A. Well, it is down here on Olympic Street near Gladys.

Q. About how far apart are those two, can you estimate or do you know? A. Well, around three miles or over, or so.

Q. Did you see Mr. Volkoff? A. Yes.

. . . . . .

82 Q. Well, start with your conversation with Mr. Volkoff. A. Well, we went there, and he asked us what we wanted. We said, "We'd like to see you."

He asked us in his back office, and he wanted to know what he could do for us. I said to see if I can get some work, straighten it out. He said, "I can't do anything for you because you are out. You are not qualified for this job."

And Mrs. Cody showed him the photostatic copy of John Annand's letter, and he said this letter didn't mean anything. He says, "I am the union." The way he said it, I guess he was top man.

. . . . . .

Q. Was there any mention made of a withdrawal card? A. Oh yes, yes, there was. He said, well, I should take a withdrawal card and join another union.

. . . . . .

83 Q. Have you had any conversation with Mr. Simpson since then? A. Yes.

. . . . . .

84 Q. (By Mr. Weil) Did he say anything about coming back to work? A. As soon as I got this straightened out, he'd take me back or he'd get me on in the spring, when things get going more, and he wanted to keep me right on.

Q. Do you recall anything else that was said? A. He says he'd like to have me there because other men come out of that hall, can't get much work out of them because some of them come down there, they have been drinking a little, and things like that, and they'd have to work them four hours, then he'd let them go because they weren't very good workers.

85 Q. Had you ever worked out of the hiring hall? A. Yes.

Q. When did you first start working out of the hiring

hall? A. Well, I believe it's around—I couldn't tell you the exact month, around in '53 or somewhere ar und there.

Q. Did you go to the hiring hall before you went to the union offices? A. To see about getting work, and the dispatcher down there told me I'd have to go up there and see Barney Volkoff. He told me where to go, and I did.

Q. What took place when you went up to see Mr. Volkoff? A. Well, just give him the money to send back East to pay up my dues back there for the withdrawal card, and he give me a card, and I went right to the hall and went to work.

100 Q. (By Mr. Weil) After your conversation, or during your conversation with Mr. Volkoff at that time,—now, I am referring back to your first visit to the hiring hall and to Mr. Volkoff—were you given a card? A. Yes.

Q. Was it— A. A card to seek work out of the hall.

101 Q. (By Mr. Weil) Were you given a hiring hall dispatchment card? A. Yes.

Q. What did you do with it? A. Took it to the hiring hall.

Q. To whom did you give it? A. Dispatcher down there.

102 Q. Now, during the time you were dispatched out of the hiring hall, what was the procedure in being dispatched? A. Well, this card, they punched it every time you come in, in the day, any time you come in; and they put it in a cigar box behind others, see, and when it come to your card, your turn to go out, they would give you a work card to go out on the jobs.

Cross Examination

Q. Does that date, January 14, 1954, strike you as the approximate date when you began working as an extra? A. Yes.

Q. (By Mr. Hackler) Was it the practice at the hall, when you took this card to the hall, to hand it in, to be stamped on a timeclock to show the time of your arrival there? A. Yes.

Q. What was your practice when you got the card and you got to the job? To whom did you give it, if you did? A. Well, there was a foreman on the job.

Q. Wasn't it your practice to turn it in to management when you got there? A. Yes.

Q. Did you ever get it back after that? A. No.

Q. And then after that job was over, I assume you were dispatched out and worked one day or some part of it, you would go back to the hall the next day, isn't that right? A. That's right.

Q. Did you have some discussion with Barney Volkoff then about some reports that employers had made about your work? A. Employers never made no complaint about my work. He never said anything about that they complained.

Q. So it is your testimony that as of now you are not aware that any employer ever made a written complaint about your work, is that right? A. That's right.

126 Q. And you became acquainted with a number of other men who for years had done the same thing, did you not? A. Yes.

Q. And that was their steady employment, namely, to be dispatched through the hall to different ones of these companies, isn't that right? A. Yes.

. . . . . .

129 Q. Occasionally, you were sent out to Los Angeles-Seattle, weren't you? A. Yes.

130 Q. On these cards? A. I was requested there a lot.

. . . . . .

Q. To your knowledge, was it a practice, if a company called for a particular man, that that man was sent? A. That's right.

. . . . . .

Q. Didn't make any difference whether he was a
131 union member or had seniority or what not? A. He had to be a union member; otherwise he wouldn't be working there.

. . . . . .

Q. (By Mr. Hackler) How did it come to your attention that employers sometimes called for particular men to be sent to them? A. As I just told you, you can tell what man is in front of you. That's the only way you know,
132 unless a man said himself he was requested, because he knew there was other men ahead of him.

. . . . . .

Q. And he was ahead of you, why would he be ahead of you? A. Because he got there before you.

Q. That particular morning? A. Yes.

Q. Did that have to do with his length of service at all, the length of time he had been dispatched out of that hall, or did it just mean that he got there at the hall in line

ahead of you? A. He got there in line ahead of you, unless he was left over from the next day.

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133 Q. Now, a moment ago you made the statement that no man got dispatched out of the hall unless he was a union member. Will you just tell us factually upon what you base that statement? A. Because you got to have your dues paid up to date and so forth.

Q. How did that come to your attention? A. I have always knew that.

• • • • • • • • • • • •

141 Q. I believe you said that some named individual, you called him "Vic" came out and spoke to you while you were working at Los Angeles-Seattle? A. That's right.

• • • • • • • • • • • •

142 Q. You had seen him before in connection with checking union cards, is that right? A. Yes.

Q. You had a union card at that time, didn't you? A. That's right.

Q. Fully paid up? A. That's right.

Q. In good standing? A. Always was.

Q. And how long was it that you kept that card? A. I kept it until Barney sent me a withdrawal in the mail in January.

• • • • • • • • • • • •

143 Q. All right, Vic, what was your conversation with him? Just tell us. A. He asked me what was I doing there, if I had a work card. I says no, and he says I have no right to work there, and I said, "Oh, yes, I do." And I told him that, "I have a letter showing that I have a right to work there."

• • • • • • • • • • • •

148 Q. In other words, your understanding was, when you got that letter, from that time onward you didn't

have to go through the dispatch hall like the others, but you went directly to whatever employer you wanted to, to get extra work? A. That's because I was forced to; I was a union member and I had a right to seek work when the president wouldn't give me work.

. . . . . .

150 Q. My question is now, isn't it a fact that Volkoff said that you were wrong about the letter? A. He said the letter didn't mean anything.

Q. Is that all that he said? A. No.

Q. What else did he say? A. He told me I wasn't qualified to work out of this local.

. . . . . .

152 Q. Isn't it a fact that Mr. Volkoff told you that if Los Angeles-Seattle wanted to hire you as a regular employee it was perfectly all right with the union? A. Yes.

Q. Did you ever go back and ask Los Angeles-Seattle for regular employment? A. Yes.

Q. What did they tell you? A. Just as soon as he can.

Q. When did you go back and ask for regular employment as a regular employee? A. Before I ever went

153 there I asked for work; before this letter, I have lots of times. But during then he wanted me to get this thing straightened up.

. . . . . .

160 Q. The 10th was the last day you worked, of November, right? A. Yes.

. . . . . .

165 Q. Speaking of Vic, do you see the gentleman here in the courtroom? A. Yes.

Q. Where is he? A. Sitting next to you.

Q. Would that be Mr. Karaty sitting here in the hearing room? A. Yes.

. . . . . .

179 Redirect Examination

. . . . . .

180 Q. Are you still a union member? A. Yes.

Q. Have you been a union member at all times between the time you joined after you left Acme and the present? A. Yes.

. . . . . .

Q. When did you get your withdrawal card? A. They sent it back to me December 29th, and I received it on December 30th.

Q. What year? A. '55. I had already paid my January dues, and he sent that back with it.

. . . . . .

188 Q. Did you ever tell Mr. Simpson or Mr. Nielsen that you would not be dispatched from the hiring hall or could not be?

. . . . . .

189 The Witness: Yes. I told him that Barney wouldn't let me work out of the hall any more, and I went down and told him about it.

. . . . . .

191 Q. After you were discharged from Los Angeles-Seattle, did you go back to the hiring hall and ask for a dispatch? A. Went back to Barney.

. . . . . .

Q. (By Mr. Weil) Were you dispatched after that? A. No.

192 Q. Were you told that you would not be dispatched after that? A. Yes.

Q. By whom? A. By Barney.

196 Q. Was there anyone else present? A. Mrs. Cody was with me.

. . . . . .

197 Recross Examination

199 Q. I believe you said that you told Mr. Simpson in May or June that the hall wouldn't dispatch you. Isn't it a fact that you were dispatched out of the hall all through the month of May and up into the month of June? A. For 30 days I was dispatched there.

201 Further Redirect Examination

Q. What do you mean by that, what was this period of 30 days? A. Well, that was the time Mrs. Cody went to see him the first time. He said he didn't want to give me work then after he kicked me out of the hiring hall. She talked him into it, to give me three days a week. He
202 said what would that mean? She said, "A child could answer that."

Trial Examiner: Strike that. Hearsay.

203 Q. Did you at any time have a conversation with Mr. Volkoff as a result of which he agreed to dispatch you for 30 days? A. Yes.

Q. Do you recall when that conversation was held? A. Well, I can't recall the day when I went up there, but it was around May sometime, I believe it was.

206 Trial Examiner: Give us the conversation between you and Barney on this date in May sometime prior to your hiring by Los Angeles-Seattle. Who said what?

207 Q. When you came in the office, and tell us all that

each of you said. A. I came into the office. I showed Barney the places where I looked for work on some different pieces of paper. I said they all signed it. There
208 weren't any work. I asked them first. Each place I went, I got their name and so forth; some gave cards, and I took them and give them to Barney. He looked them over. He says, "That shows they don't want you."

That was during the strike time, and somebody else come in. He said, "How about the time that you wouldn't go out on the picket line?"

See, I wasn't in the picket line. Nobody sent me. Otherwise I'd have.

Q. Just tell what was said. A. He said, "Give him a withdrawal card," that other fellow that was in the office up there said. And Barney gave me the work card for 30 days, and he says, "After that you will have to go and get your own."

. . . . . .

210 Q. Now, then you worked in the hiring hall for 30 days, worked out of the hiring hall; they dispatched you for 30 days after that? A. Beginning the week there, I didn't work steady because somebody said the strike was on.

. . . . . .

211 Q. Now, at the end of that 30 days did you continue working? Did you continue working out of the hiring hall? A. No.

. . . . . .

Q. (By Mr. Weil) At the end of the 30 days, did you have another conversation with Mr. Volkoff? A. Yes.

. . . . . .

Q. How did you happen to have that conversation? A. The dispatcher down there give me the card and told me to take it to Barney Volkoff.

. . . . . .

212 Q. Did you take the card to Barney? A. Yes.

. . . . . .

213 Q. Will you tell us what was said in this conversation? A. There was another guy in the hall. He says—Barney said something about, "How come you weren't out on that—didn't go out on the picket line?" I told him that nobody asked me to. I was out a week. I thought the strike was on. The hall was closed. The guys told me there weren't no work.

Q. Is this what you told him? A. Yes. And the other guy stepped in; he said, "Why don't you give him a withdrawal card?"

And I got right up and got out because I wouldn't stand for that.

. . . . . .

Q. (By Mr. Weil) Was anything said about your not being dispatched any further, any longer? A. Yes.

. . . . . .

214 Q. (By Mr. Weil) Have you told us all of that conversation? A. No, I didn't. He told me that I was just out, that I wasn't qualified to work out of this union at that time.

Trial Examiner: Did Barney tell you that?

The Witness: Yes.

. . . . . .

215 Further Recross Examination

. . . . . .

Q. (By Mr. Hackler) Do you recall that your last dispatchment before May 10th, before your meeting with Barney on May 10th, was to Pacific Intermountain Express Company? Do you recall being dispatched from the hall to that company? A. Yes.

. . . . . .

216 Q. And when you got out there did you put in any work at all? A. No.

217 Q. That you got paid for? A. No.

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218 Q. Whom did you see there, some representative of the company? A. Yes.

Q. Did you have a conversation with him? A. Yes. He said, "You have to go over there and unload these trucks over there." I knew where he pointed; I told him I couldn't break out very good.

Q. What did you mean when you told him, "I can't break out very good," after he told you to go over to those trucks? A. Because him and I, we tried it; I tried it before there with him, breaking out, calling over the loudspeaker. I couldn't do a very good job doing that, so they put me breaking out other trucks; they gave me a list to break out that one time, but that time I told him I couldn't do it.

• • • • • • • • • • •

219 Q. And you told him that you didn't think you could do it very good, but that there was some other job out there that you could do? A. I could do anything else he wanted to put me on. It was up to him.

Q. You told him the particular job he asked you to do, based on your past experience, you couldn't do it very well? A. That's right.

Q. And what did he do then, did he put you to work or send you away? A. He sent me away. He said, "If you can't do it, go on back to the hall."

• • • • • • • • • • •

221 Q. In any event, you went back to the hall and showed them the card and told them what had happened, is that right? A. Yes.

Q. To whom were you talking there, the dispatcher? A. Yes, his name is Blackmar.

• • • • • • • • • • •

Q. And he said, "You had better go over and see Barney about this," is that correct? A. Yes. He told me to go and see Barney.

Q. Did you go see Barney that day at all? A. Yes.

. . . . . .

230 Q. (By Mr. Hackler) Let me direct your attention to Respondent Union's 2, which is a referral card dated February 4, 1954, which you identified as a dispatchment card to the Southern California Freight Lines on Alameda Avenue.

When you got out on that dispatchment, did you work? A. No.

Q. Did you fail to show up on the dock or go to the wrong dock or something? A. Wrong dock.

. . . . . .

Q. They didn't [illegible] you, did they? A. No, but I went several times after that.

. . . . . .

235 Q. Do you recall an occasion in October of 1954 when the W.F.A. Company—when you were sent out to the W.F.A. Company, you had some dispute or problem over the parking situation? A. Yes.

. . . . . .

236 Q. You took a card out there, and what reason did they give you for sending you back to the hall? A. I tried to park in front of the place. A guy come out; he said, "You can't park there. Take it across the street and park it." And I did. And it is a railroad yard over there, and they had signs up, "No Parking."

237 I went back and told him, and he said, "If you can't find a place to park, take the card and go on back."

. . . . . .

238 Further Redirect Examination

Q. (By Mr. Weil) You testified concerning an incident at P.I.E., where you described the breaking-out procedure. What was there about breaking out that you couldn't do very well? A. Well, I couldn't read them all out, to read them correctly over the loudspeaker, which I could if I had the bills.

. . . . . .

Q. What was there about that that was difficult for you? A. Hard to read all the words.

. . . . . .

244 **Oscar Nielsen,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testefied as follows:

Direct Examination

. . . . . .

245 Q. By whom are you employed? A. Los Angeles-Seattle Motor Express.

Q. What is your job there? A. Dock foreman.

. . . . . .

249 Q. (By Mr. Weil) Now, Mr. Nielsen, during Mr. Slater's employment by you, were you approached by any representative of the union in regard to Mr. Slater's employment? A. Mr. Karaty.

. . . . . .

Mr. Hackler: Stipulate that he is a business agent of Local 357, or was at the time in question.

. . . . . .

250 Q. Can you tell me when—as a point of reference. I believe the date of the discharge was November

12th—can you tell me when, in reference to that, you and Mr. Karaty spoke at the terminal about Mr. Slater's employment? A. Why, yes. He said that he couldn't work there without a referral card.

. . . . . .

251 Q. Did you have a further meeting? A. Well, the last night before Mr. Slater was discharged, yes.

. . . . . .

Q. What was said at this meeting? A. He asked the same question. He says, "Have you got a referral card on Slater?"

I said, "No, Mr. Simpson is taking care of that. He has the letter on him."

Q. Was there anything else said? A. Well, yes. He said that, "You can't work this man any longer here without a referral card."

. . . . . .

252 Q. Was there anything else said then in that conversation? A. Yes. He says, "If I catch Slater back here again," he said, "I will have to run every man off the job."

. . . . . .

260 Cross Examination

. . . . . .

263 Q. Was Mr. Slater a competent employee during the time he worked for you? A. Well, in his capacity
264 he was a good worker.

Q. Did he ever refuse to do any job for you? A. No.

. . . . . .

William L. Simpson,

called as a witness by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

. . . . . .

Q. Are you employed by the Los Angeles-Seattle Motor Express Company, Inc. A. Yes.

265 Q. In what capacity? A. Terminal superintendent.

Q. How long have you been in that capacity? A. About ten years.

Q. Does the terminal superintendent and the dock superintendent, are they the same thing? A. Same thing.

Q. As part of your job, do you hire employees who work for the company? A. Some of them.

Q. Who else hires employees? A. Well, Seattle hires some for the over-the-road men.

Q. Referring particularly to the men who work on the dock, do you hire all of them? A. The biggest part of them, yes.

Q. Now, do you have regular employees who work on the dock? A. Yes, we do.

Mr. Hackler: May I inquire, when you said "hire employees," do you have reference to regular or casual employees?

Mr. Weil: I am just coming to that.

Q. (By Mr. Weil) You have casual employees who work on the dock? A. Yes.

Q. Do you hire those yourself? A. That's right.

. . . . . .

266 Q. How do you get your extra employees? A. We call them from the hiring hall.

Q. What hiring hall? A. Union hiring hall.

. . . . . .

274 Trial Examiner: Are you familiar with the wage scales that are paid under this contract?

The Witness: Only by the little card that the union puts out.

. . . . . .

275 Q. What did Mr. Watkins tell you about hiring through the union? A. Well, sometime back he stated that we were to get our extra labor from the union hiring hall.

276 Q. (By Mr. Weil) Mr. Simpson, did you or Mr. Nielsen or anyone working under you keep a record of the dispatches of individuals from the hiring hall to you, any type of a record? A. Well, we don't keep a record of them. We just call down there and they send us men if they have them, to fulfill our requirement.

278 Q. (By Mr. Weil) Did you hire Mr. Slater on or about August 27 1955? A. Yes, I did.

279 Trial Examiner: Mr. Slater asked you for employment; did you tell him anything at that time?

The Witness: Yes, I told him that if he could clear through the union, why, sure, that we could use him.

Q. (By Mr. Weil) Did he answer that? A. He told me that he had a letter that he had from Mr. Annand
280 saying that he could work.

Q. What did you say to him? A. I stated to him, if he could get me a photostatic copy, I see no reason why we couldn't use him extra for what we had.

284 Q. Did Mr. Karaty become angered after you showed him the letter? A. I can't remember whether he did or didn't.

294 Q. (By Mr. Weil) Do you recall what Mr. Karaty said on that occasion? A. My recollection is that he said that he had took Mr. Slater off some other jobs, or to

that effect, and I believe he stated that he couldn't read nor write, or thereabouts words.

• • • • • • • • • • • •

295 Q. Will you tell us then what was said in that phone conversation, as you recall it now? A. Mr. Karaty stated that "we'd have to get rid of Slater, and if we didn't, that he was going to tie the place up in a knot, would pull the men off."

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297 **William L. Simpson,**

a witness recalled by and on behalf of the Employer, having been previously duly sworn, was examined and testified as follows:

Direct Examination

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304 Q. In response to certain questions by Mr. Weil, you have indicated that from time to ti. you called the hiring hall, do you recall? A. Yes.

Q. What has been your practice in the past as to designation of particular persons, have you ever done that? A. Yes, we do use the same man back if he is a good employee or a good worker, and if he comes out, and we need him the following day, I usually call the hiring hall
305 and so advise them, that we have asked that man to be used another day, and usually the hiring hall dispatcher says for me to change the card to the day, one more day or two more days, whichever we tell him that we are going to need the man, and go ahead and use him.

Q. I understand you have a situation where a man has come out on a card for more than one day? A. That's right.

Q. And then this other that you have described would be if you were going to use him beyond that first day? A. That's right. In other words, if we used a man yesterday,

which we did, and we needed him back today, we would notify the hiring hall this morning that we had told that man to come back.

Q. Have you ever had occasions when you would have occasion to use a man, say, on a Monday this week, find his work to be satisfactory, and maybe next week or the week after, when you required help, ask for that particular man? A. Yes, we do that quite often.

Q. How often did that happen in the fall of 1955 and since? A. If a man was working at that time, as shortage as labor was, he came out of the hiring hall, why, we would notify the hall that we were going to use him another day or two more days, whatever our needs was.

306 Q. My question, Mr. Simpson, now went to this other situation. Maybe I better ask it again to be sure we are talking about the same thing.

I understood you had two situations, when you might specify a particular man from the hall. One was where you had him working, we will say, today and you wanted him tomorrow; you would call the hall and say this man worked out all right, "I want to keep him another day." A. That's right.

Q. And the people at the hall would say, "Just change his card?" A. That's correct.

Q. Now, was I correct that you also had a situation where from time to time you might know a man who did good work, who was not working today, but you knew you were going to need a man tomorrow, and you would say, "I want you to send out Mr. Jones?" A. That's correct. I will call the hiring hall, and sometimes I will ask him if Mr. Jones is in there, if he was a good worker, and if they say yes I will say, "Well, send him back. He did a good job."

Q. Has this request been honored? A. Yes.

Q. That has been for extra work, has it? A. That's right.

. . . . . .

310 **Florence Hilka Cody.**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

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312 Q. You went with Mr. Slater to call on Mr. Simpson after Mr. Slater was released from Los Angeles-Seattle Motors; is that not so? A. Yes.

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313 Q. Would you tell us what was said by you during this conversation? A. Oh, what was said was the first thing Mr. Simpson said how terrible it was that Lester Slater was put off the job there at Los Angeles-Seattle Motors Express, when he had that letter from John Annand, and he asked me, Bill Simpson, how I happened to be—how such a letter got to be written, and as long
314 as he asked me I told him. I said I went up to the Council to see Mr. Chapman; I didn't go to see Mr. Volkoff because I heard he was hard to talk to, and on the strength, the way he treated Mr. Lester Slater I thought it was best if I went to the Council, and I saw Mr. Chapman.

• • • • • • • • • • •

A. (Continuing) And Mr. Chapman and I talked the thing over about 15 minutes, and he was very nice. He said that he was pretty sure, a situation like this, "I am pretty sure Mr. Volkoff would straighten this out."

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315 "Well, I asked Mr. Chapman if he would please call Barney Volkoff in his office," and I said, "I want to see his flying colors like you think he will help Mr. Slater."

He said, "All right, I will, Mrs. Cody." And he did. He

phoned down to Mr. Volkoff, and Mr. Volkoff come up into his office, and Mr. Chapman introduced me to Mr. Volkoff, and he said I was there on behalf of Mr. Lester Slater, and as soon as he heard that, I saw Mr. Volkoff get excited.

316 A. I asked Mr. Barney Volkoff what he had against Lester Slater and why he was doing this to him. And he said, "For a few reasons, one is about the P.I.E." He was telling me about that. And again he said "Another thing, he is an illiterate," and the other thing he said is that he didn't like the way he dressed. And he fussed around and fussed around.

317 Trial Examiner: Of course, you never got around to the matter of the letter, but maybe it is not material.

318 The Witness: I wrote to David Beck

319 **Victor L. Watins,**

a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

Direct Examination

Q. Are you the Mr. Watkins that was referred to as being the officer of the company in charge of the Los Angeles terminal? A. Yes.

Q. What is precisely your title in that respect? A. I am assistant general manager of the company, and in charge of the Los Angeles terminal.

Q. As such you have complete charge of the terminal? A. Yes.

319. Q. Do you have charge of the officers of the terminal, also? A. They are under my jurisdiction, yes.

• • • • • • • • • • •

320 Q. Do you know when an employee is dispatched to you by the hiring hall how much seniority he has? A. No.

Q. Do you have any way to determine that?

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324 The Witness: If we felt it was necessary, we would probably call the Teamsters Union to see what information they had there, where these men had registered.

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325 Q. Do you receive seniority lists of any type from the union? A. No.

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328 Cross Examination

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332 Q. (By Mr. Hackler) Are you familiar with a practice, if there is one, by which a casual employee who has been sent to your firm and who is not satisfactory for some reason, for example, he is drunk or wouldn't work or something of that kind, as to how a record of that gets back to the dispatch hall; do you know of any practice in that regard? A. I am familiar with that. The dock superintendent makes whatever report he feels is justified on the bottom of the referral card and mails it back to the union local.

Q. Now, inviting your attention for the purpose of form to Respondent Union's 4, which is a referral card, I
333 note there that there is a box where a cross mark can be placed, which says, "Refused to Hire."

Now, in the event a man was sent out to your company, and for any reason they refused to hire him, either because

of his condition or attitude or what not, would it be appropriate and is it the process for the people working under you to indicate that, either by a cross mark there or by remarks, giving the details of the incident, or by both? A. It is practical, and our dock superintendent does that.

Q. Do you know how that referral card with that added information gets back to the dispatch hall? A. Through the U.S. mail.

Q. Normally mailed back? A. Yes, from our place it is, yes.

. . . . . .

338 Cross Examination

. . . . . .

339 Q. (By Mr. Hackler) Mr. Watkins, do you recall being present at a meeting a few years back, which was called by the unions who operate this dispatch hall, a meeting attended by yourself and other employer representatives, at which the mechanical procedures being used at the hall, the dispatch hall, for casuals was dis-
340 cussed and explained and the forms shown, and the employer asked to cooperate in returning these cards in appropriate cases? A. Yes, I did attend such a meeting.

Q. About how long ago was that, sir? A. My closest estimate would be three years, or not more than four years ago.

Q. Where was it held? A. In the Teamsters Building at Ninth and Union.

. . . . . .

341 Q. You may or may not recall this: Do you recall that that occurred shortly after those unions had settled a case before the NLRB, where a claim of discrimination had been made arising from the dispatch of casuals from this hall, if you know? A. I do not know.

. . . . . .

342 Mr. Weil: May it be stipulated that now and at all times relevant to this inquiry John M. Annand, A-n-n-a-n-d, held the position of International Representative, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, and the elected position—

. . . . . .

—of president of Joint Council 42?

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DECISION AND ORDER

On October 9, 1956, Trial Examiner William E. Spencer, issued his Intermediate Report in the above-entitled proceeding, a copy of which is attached, finding that the Respondents, Los Angeles-Seattle Motor Express, Incorporated, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 357, herein called the Respondent Company and Respondent Union, respectively, had not engaged in any of the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety. Thereafter, the General Counsel filed exceptions to the Intermediate Report, together with a supporting brief.

The Board has reviewed the rulings made by the Trial Examiner at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and brief, and the entire record in the case and, for the reasons stated below, finds merit in the General Counsel's exceptions.

I. The Trial Examiner found that the Respondents did not violate the Act by giving effect to their 1955 contract. We do not agree.

During the period covered by the complaint, the Respondent Company and Respondent Union gave effect to a contract executed in May 1955, which provided, in pertinent part, as follows:

> . . . The Employer shall first call the Union or the dispatching hall designated by the Union for . . . [casual] help. In the event the employer is notified that such help is not available, or in the event the employees called for do not appear for work at the time designated by the employer, the employer may hire from any other available source.

This language in the contract plainly obligates the Respondent Company to hire casual employees exclusively through the Respondent Union. Such an exclusive hiring

agreement between an employer and a union, the Board has recently held, constitutes an inherent and unlawful encouragement of union membership *unless* the agreement explicitly provides that: (1) Selection of applicants for referral to jobs shall be on a nondiscriminatory basis and shall not be based on, or in any way affected by, union membership, by laws, rules, regulations, constitutional provisions, or any other aspect or obligation of union membership, policies, or requirements; (2) The employer retains the right to reject any job applicant referred by the union; and (3) The parties to the agreement post in places where notices to employees and applicants for employment are customarily posted, all provisions relating to the functioning of the hiring arrangement, including the safeguards deemed by the Board to be essential to the legality of an exclusive hiring agreement.[1] None of these safeguards essential to the legality of an exclusive hiring arrangement is contained in the contract to which Respondent are parties. Under all the circumstances, we conclude that the Respondent Company has violated Section 8 (a) (3) and (1) of the Act, and the Respondent Union has violated Section 8 (b) (2) and (1) (A) of the Act, by giving effect to the hiring provisions of their contract.[2]

2. Nor, do we agree with the Trial Examiner's finding

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[1] *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al.*, 119 NLRB Nos. 126 and 126-A.

[2] As the charges against the Respondents were not filed within 6 months of the execution of the contract in question, our finding against the Respondents is limited in the manner indicated and no finding is based on the execution of the contract. In the instant connection, we have rejected the Respondents' contention to the effect that no unfair labor practice finding based on the contract is proper because no charge was filed which attacks the contract. The charges allege discrimination by the Respondent Company against Slater, caused by the Respondent Union, and the Respondents' violation of the Act, "by these and other acts." Such charges are adequate to support the pertinent allegations in the complaint. *Triboro Carting Corporation*, 117 NLRB 775. Moreover, the legality of the contract was put in issue by the Respondents themselves in raising it as a defense to the discrimination allegations of the complaint. See *Seaboard Terminal and Refrigeration Company*, 115 NLRB 1391.

that the Respondent Company did not discriminatorily deny employment to Slater, the charging party, after November 10, 1955, and that the Respondent Union did not unlawfully cause such discrimination.

Prior to November 10, 1955, Slater had obtained employment from the Respondent Company, although not dispatched by the Respondent Union. Upon learning of this fact, the Respondent Union complained to the Respondent Company that it was violating their contract by employing Slater without a referral card, and demanded that it cease using Slater without such a referral by the Respondent Union. On November 10, the Respondent Company complied with the Respondent Union's demands and told Slater not to return to work until he "had the matter cleared up." Slater has not worked for the Respondent Company since.

The foregoing facts make it abundantly clear that Slater's loss of employment after November 10 was the result of the Respondents' implementation of the hiring provisions of their contract.[3] It having been found that those hiring provisions were unlawful, it follows that Respondent Company's denial of employment to Slater, as demanded by the Respondent Union, was also unlawful and violative of the Act.[4] Accordingly, we find that the Respondent Company violated Section 8 (a) (3) and (1) of the Act, and the Respondent Union violated Section 8 (b) (2) and (1) (A) of the Act, by their conduct with respect to Slater.

The Remedy

Having found that the Respondents have violated the Act, we shall order that they cease and desist therefrom

[3] Like the Trial Examiner, and for the reasons stated by him, we find, in agreement with the position of the Respondents themselves, that Slater was a casual employee under the contract at all critical times herein.

[4] *Mountain Pacific Chapter of the Associated General Contractors, Inc., et al, supra.*

and take certain affirmative action in order to effectuate the policies of the Act.

By the illegal hiring provisions of their contract, the Respondents have unlawfully encouraged employees to join the Respondent Union in order to obtain casual employment, thereby inevitably coercing those employees to pay union initiation fees and dues. It would not effectuate the policies of the Act to permit the retention of the payments of these union initiation fees and dues which have been unlawfully exacted from casual employees. As part of the remedy, therefore, we shall order the Respondents jointly and severally to refund to the casual employees involved the initiation fees and dues paid by them as a price for their employment.[5] This remedy of reimbursement is, we believe, appropriate and necessary to expunge the coercive effect of Respondent's unfair labor practices.[6]

It has been found that the Respondents discriminated against Lester H. Slater. Because of Slater's status as a casual employee of the Respondent Company at the time of the discrimination against him, no order of reinstatement is warranted. However, we shall order that the Respondent Company and Respondent Union jointly and severally make whole Slater for any loss of pay suffered as a result of the discrimination against him. The back pay shall be computed in accordance with the formula promulgated in *F. W. Woolworth Company*, 90 NLRB 289.

As the Trial Examiner did not find that the Respondents discriminated against Slater, we shall not hold the

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[5] Respondents' liability for reimbursement shall include the period beginning 6 months prior to the filing and service of the charges herein and shall extend to all such monies thereafter collected, exempting the period between the date of the Intermediate Report and the date of the Order herein, as the Trial Examiner dismissed the complaint insofar as it alleged that the Respondents' contract violated the Act.

[6] See *United Association of Journeymen & Apprentices of Plumbing & Pipefitting Industry of the United States and Canada, Local 231, AFL-CIO*, 115 NLRB 594; *Broderick Wood Products Company*, 118 NLRB 38; *Houston Maritime Association, Inc.*, 121 NLRB No. 57.

Respondents accountable for any back pay during the period between the issuance of the Intermediate Report and our Decision and Order. Cf. *Utah Construction Company*, 95 NLRB 196.

We shall direct each Respondent to notify the other, and Slater, that it has no objection to the employment of the charging party. The back pay liability of either Respondent shall be tolled 5 days after it serves such written notices.

ORDER

Upon the entire record in this case, and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that:

1. The Respondent Company, Los Angeles-Seattle Motor Express Incorporated, its officers, agents, successors, and assigns, shall:

(a) Cease and desist from:

(1) Performing, maintaining, or otherwise giving effect to provisions of any agreement with the Respondent Union, or any other labor organization, which unlawfully conditions the hire of applicants for employment, or the retention of employees, upon referral or clearance by the Respondent Union, or any other labor organization, except as authorized by the proviso to Section 8 (a) (3) of the Act;

(2) In any like or related manner encouraging membership in the Respondent Union, or in any other labor organization, or otherwise interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act;

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Jointly and severally with Respondent Union, make whole Lester H. Slater for any loss he may have suffered

by reason of the discrimination against him, as provided in the Section herein entitled "The Remedy";

(2) Jointly and severally with Respondent Union, reimburse all employees for monies illegally exacted from them in the manner and to the extent set forth in the section herein entitled "The Remedy";

(3) Post at its offices, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto as Appendix A.[1] Copies of said notice, to be furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent Company's representative, be posted immediately upon receipt thereof and maintained by the Respondent Company for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Company to insure that said notice shall not be altered, defaced, or covered by any other material;

(4) Preserve and make available to the Board or its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all records necessary to analyze the amount of back pay due and the rights of Lester H. Slater under the terms of this Order;

(5) Notify Lester H. Slater and the Respondent Union, in writing, that it has no objection to Slater's employment;

(6) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

II. The Respondent Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 357, its officers, representatives, and agents, shall:

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[1] In the event this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words, "PURSUANT TO A DECISION AND ORDER," the words, "PURSUANT TO A DECREE OF THE UNITED STATES COURT OF APPEALS, ENFORCING AN ORDER."

(a) Cease and desist from:

(1) Performing, maintaining, or otherwise giving effect to provisions of any agreement with the Respondent Company, or any other employer within the meaning of the Act, which unlawfully conditions the hire of applicants for employment, or the retention of employees in employment with any employer, upon referral or clearance by the Respondent Union, except as authorized by the proviso to Section 8 (a) (3) of the Act;

(2) Causing or attempting to cause the Respondent Company, or any other employer, to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act;

(3) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act;

(b) Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(1) Jointly and severally with Respondent Company, make whole Lester H. Slater for any loss of pay he may have suffered by reason of the discrimination against him, as provided in the Section herein entitled "The Remedy";

(2) Jointly and severally with Respondent Company, reimburse all employees for monies illegally exacted from them in the manner and to the extent set forth in the section hereof entitled "The Remedy";

(3) Notify Lester H. Slater and the Respondent Company, in writing, that it has no objection to Slater's employment;

(4) Post at its offices, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto as Appendix B.* Copies of said notice, to be

* See footnote 7, *supra*.

furnished by the Regional Director for the Twenty-first Region, shall, after being duly signed by Respondent Union's representative, be posted immediately upon receipt thereof and maintained by the Respondent Union for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Respondent Union to insure that said notice shall not be altered, defaced, or covered by any other material;

(5) Notify the Regional Director for the Twenty-first Region, in writing, within ten (10) days from the date of this Order, what steps it has taken to comply herewith.

Dated, Washington, D. C., October 31, 1958.

.....
BOYD LEEDOM, Chairman

.....
PHILIP RAY RODGERS, Member

.....
STEPHEN S. BEAN, Member

.....
JOSEPH ALTON JENKINS, Member

.....
JOHN H. FANNING, Member
NATIONAL LABOR RELATIONS BOARD

(SEAL)

APPENDIX A

NOTICE

TO ALL EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH LOS ANGELES-SEATTLE MOTOR EXPRESS, INCORPORATED

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to

effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain, or otherwise give effect to the provisions of any agreement with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 357, or with any other labor organization, which unlawfully conditions the hire of applicants for employment, or the retention of employees, upon referral or clearance by the aforementioned labor organization, or any other labor organization, except as authorized by Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner encourage membership in the above-named labor organization, or in any other labor organization, or otherwise interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act.

WE WILL make whole Lester H. Slater for any loss of pay suffered as a result of the discrimination against him.

WE WILL reimburse our employees for the initiation fees and dues they were illegally required to pay to International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 357, as a result of the unlawful hiring provisions in our contract with the aforementioned labor organization.

All our employees and prospective employees are free to become or remain, or to refrain from becoming or remaining, members of the above-named union, or any other labor organization, except to the extent that this right may be affected by an agreement in conformity with Section 8 (a) (3) of the Act.

LOS ANGELES-SEATTLE MOTOR EXPRESS, INCORPORATED

(Employer)

Dated ..... By .....

(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

APPENDIX B

NOTICE

TO ALL EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH LOS ANGELES-SEATTLE MOTOR EXPRESS, INCORPORATED

PURSUANT TO

A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain, or otherwise give effect to the provisions of any agreement with Los Angeles-Seattle Motor Express Incorporated, or with any other employer, which unlawfully conditions the hire of applicants for employment, or the retention of employees in employment with any employer, upon referral or clearance by any labor organization, except as authorized by Section 8 (a) (3) of the Act.

WE WILL NOT cause or attempt to cause the above-named employer, or any other employer, to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act.

WE WILL reimburse the employees of Los Angeles-Seattle Motor Express, Incorporated, for the initiation fees and dues they were illegally required to pay to our union as a result of the unlawful hiring provisions in our contract with the aforementioned company.

WE WILL make whole Lester H. Slater for any loss of pay suffered as a result of the discrimination against him.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFERS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 357
(Labor Organization)

Dated ..... By .....
(Representative) (Title)

. . . . . .

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

. . . . . .

INTERMEDIATE REPORT AND RECOMMENDED ORDER

Statement of the Case

This proceeding, brought under Section 10 (b) of the National Labor Relations Act (61 Stat. 136), herein called the Act, against Los Angeles-Seattle Motor Express, Incorporated, herein called the Company or the Employer, and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 347, AFL-CIO, herein called the Union, upon charges filed by Lester H. Slater, an individual, upon consolidated complaint and answers was heard before the undersigned Trial Examiner upon due notice in Los Angeles, California, on August 27, 30, 1956.

The complaint alleged in substance that the Employer on demand of the Union discharged Slater for reasons other than his failure to pay dues and initiation fees regularly required of all employees of the Employer and that Section 8 (a) (1) and (3) and Section 8 (b) (1) (A) and (b) (2) were thereby violated by the Employer and

the Union respectively. In its answer the Union admitted that it requested Slater's discharge as alleged in the complaint but denied that this constituted a violation of the Act and adduced as affirmative defense that the request for discharge was based on Slater's violation of the valid provisions of the Union's contract with the Employer. The Employer in its answer denied generally the allegations with respect to Slater, except to admit that the Union demanded that the Employer refuse to employ Slater as a casual employee within the meaning of the Employer's contract with the Union.

The complaint alleged that the Employer and the Union had further violated these same sections of the Act, respectively, by "giving effect" to certain provisions of their bargaining agreement relating to seniority with respect to casual employees. The answers denied the alleged violation.

After the evidence had been taken there were oral statements on the issues, and the General Counsel has, since the close of the hearing, filed a brief with the undersigned.

Upon consideration of the entire record in the case and from my observation of the witnesses, I make the following:

Finding of Fact

I. The business of the Respondent Employer

The Respondent is a Washington corporation engaged in the business of trucking freight between points within the State of California and between points in California and other States. It renders services as a motor freight carrier in Western States under authority of regulatory commissions of the various States and the Interstate Commerce Commission, of a value in excess of $1,000,000 annually.

It is admitted and found that the Respondent Employer is engaged in commerce within the meaning of the Act, and that it will effectuate the policies of the Act for the Board to assert its jurisdiction herein.

II. The labor organization involved

The Respondent Union is a labor organization within the meaning of Section 2, subsection (5) of the Act.

III. The unfair labor practices

A. *The Slater Incident*

On November 10, 1955, on demand of the Union the Employer discharged, or thereafter refused to employ, the charging party, Lester H. Slater, as a casual employee. On all material dates Slater was a member of the Union in good standing. He was not therefore denied employment for failure to tender periodic dues and initiation fees uniformly required as a condition of acquiring and retaining membership in the Union, and the Employer had knowledge of the basis for the Union's demand relative to Slater. These facts alone according to the General Counsel—as I understand his position—establish a violation of Section 8 (a) (3) and Section 8 (b) (2), respectively, by the Employer and the Union.

The defense is that Slater was not a regular but a casual employee and as such was required to obtain clearance through the Union's dispatching service as provided in the Union's contract with the Employer, and not having done so was lawfully subject to denial of employment as a casual employee until so dispatched. No question is raised as to the Union's representative status or the contract although, as will be seen hereinafter, certain practices under the contract relating to seniority are attacked. The provision relative to the dispatching service *qua* dispatching service, restricted as it was to casual employees, is admittedly valid. Admittedly Slater did not obtain the job in question through the normal regular procedures of the Union's dispatching service.

Assuming *arguendo* that Slater was in fact a casual employee I find, contrary to the General Counsel's position, that the Employer's refusal, on demand of the Union, to

continue to employ Slater as a casual employee unless and until he was dispatched to the job by the Union, constituted no violation of the Act on the part of either the Union or the Employer. I consider the decision in the *Furriers* case [*N. L. R. B.* v. *Furriers Joint Council, et al.*, 224 F. 2d 78 (C.A. 2,) 36 LRRM 2267] applicable to this issue. The court in that decision held, in substance, that employees have no protected right under Section 7 of the Act to violate the valid provisions of a collective bargaining contract. The following language from the court's decision in the *Furriers* case finds proper application here:

> The Board's interpretation would have the effect of furnishing statutory protection to employees who choose to violate valid provisions of labor-management contracts. This we think is not consistent with the underlying purpose of the Act to promote the consummation of collective bargaining agreements as "the effective instrument of stabilizing labor relations and preventing through collective bargaining, strikes and industrial strife."

The rationale of this decision, it is remarked, presents nothing new or startling in juridical concepts on issues arising under the Act, but has its base in decisions reaching all the way back to the *Sands Manufacturing Co.* case, 306 U.S. 332, 344, and has been applied by the Board in numerous decisions exonerating employers from the charge of unfair labor practices, as where reinstatement has been denied to employees who have struck in violation of no-strike agreements.[1] The answer to the General Counsel's argument that if "the Union has any rights under its contract, when the Employer hires employees in violation of the contract, such rights are against the Employer, the violating party, not the employee," is contained in the

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[1] "An employer may lawfully discharge or otherwise discipline employees for engaging in an unprotected strike. . . ." *California Cotton Cooperative Association, Ltd.*, 110 NLRB 1494, 1500, citing *United Elastic Corporation*, 84 NLRB 768. See also Administrative Ruling of General Counsel, Case No. K-653, 38 LRRM 1418.

Furriers decision, and may be further disposed of by posing a question: Is there to be one rule in the case of an employer respondent and another conflicting, more restrictive, rule in the case of a union respondent?

I am aware of course that the *Furriers* decision was based solely on an alleged violation of Section 8 (b) (1) (A) of the Act, but the reasoning of that decision applies with equal cogency to the violations herein alleged with respect to Slater. In any event I concur in and adopt the language of the Trial Examiner in the *Furriers* case (108 NLRB 1506, 1520, 1521, 1522) with respect to his findings and conclusions on the alleged 8 (a) (3) and 8 (b) (2) violations in that case, from which I quote in part:

> Once a union . . . has achieved its goal of writing employment conditions into a contract, and provided of course the conditions are not illegal themselves, their performance by employees may no longer be regarded in the statutory sense as assistance to the union or participation in its concerted activity from which employees are entitled to refrain. The entire scheme of the Act contemplates that when valid provisions governing employer-employee relations have been negotiated into contract form, such provisions are to be observed, not only by the union and the employer who sign the contract, but by all employees in the bargaining unit for whom the union acts as statutory agent, regardless of their membership or nonmembership in the labor organization. And conduct engaged in by an employee in contravention or derogation of the contract . . . may not be found an activity protected under Section 7 of the Act. Nor, as a necessary corollary to that proposition, may reprisal measures taken by the union or employer against an employee for engaging in such conduct be found an infringement of the employee's statutorily protected rights.

Coming now to the General Counsel's further contention that Slater was not a casual but a regular employee, and therefore was not subject to the dispatching hall provisions

of the contract, it is clear that if the General Counsel is right on the facts he is also right on the law, for the Union's demand and the Employer's compliance with it can only be justified under the contract, and the contract provides that only casual employees are required to be dispatched by the Union. I do not, however, think that the General Counsel is right on the facts, for I am convinced that Slater was a casual employee within the meaning of the contract. As such he was indeed also an employee within the meaning of the Act and that, it appears, is all that is established in *Union County Newsdealers Supply Co.*, 114 NLRB No. 247, cited by the General Counsel in support of his position.

Apparently it is the General Counsel's position that in determining whether Slate. was a casual employee and therefore subject to the contract, we should ignore the intent of the contracting parties for it can hardly be doubted on the evidence that the parties intended that employees of his employment status should be subject to the contractual provisions relating to casual employees. Of course it would be permissible to show that Slater could not reasonably have been placed in the category of casual employees, and therefore the parties could not have intended to include him in that category, but there is no evidence that he was singled out and subjected to discriminatory treatment, and I can hardly conceive of any reason why he should have been. Obviously the contracting parties could have made the dispatching service applicable to regular as well as casual employees and it would have made no change in the legality of such a provision, and sir. Slater was a member of the Union in good standing, what motive would the Union have had for insisting that his employment status was casual rather than regular if that was indeed not the fact? As a matter of fact, the Union informed the Employer and informed Slater that if the Employer wanted to employ the latter as a regular employee, it had no objection. Therefore it never demanded that Slater be denied em-

ployment as a regular employee, but only as a casual employee subject to the dispatching requirements of the contract.

Did I agree with the General Counsel that in construing the contract we should ignore the intent of the parties and independently determine whether Slater was a casual employee, I still would be compelled to find that a heavy preponderance of the evidence places him in the casual employee category. In support of his position, the General Counsel refers to Slater's employment record which shows, as stated in the General Counsel's brief, that he was hired by the Employer on August 27, 1955; that he worked 4 hours that night and was paid that night; that he worked 36 hours during the week ending September 3, for which he was paid in two checks, the first for 20 hours and the second for 16; that he worked 32 hours for the weeks ending September 10, September 17 and September 24, with some overtime for each of those weeks; and that for all of the weeks between October 1 and November 5, 1955, he worked 40 hours, with the exception of the week ending October 8 when he worked 36. November 10, the last day he worked, was a Thursday, and he had worked the preceding Monday and Tuesday but not Wednesday.

What this shows, and all it shows, is that during the last few weeks of his employment he worked fairly regularly, but it is a well known fact that casual or extra employees during seasons when the work load is exceptionally heavy may work with a considerable degree of regularity and may indeed be employed overtime without acquiring the status of regular employees. The General Counsel admits that Slater started as a casual or extra employee but apparently contends that as soon as he was given work equivalent to a 40-hour week he became a regular employee. The fact is that at no time did Slater fill out a written application for employment, or undergo a physical examination, or comply with bonding requirements—all required of a regular employee. His check stubs all bore the notation "Extra em-

ployee" and he admitted that at least during all but the last weeks of his employment it was customary for him to ask his foreman each day if he would be needed on the following day and while, according to him, he did not continue this practice during the final two or three weeks of his employment, but just "kept coming in," he testified on cross-examination:

Q. How did you find out you were going to work the next day? A. I didn't.

Q. Did you just come down? A. Yes, if he [the foreman] didn't need me he'd probably tell right then.

Q. In other words, the last two or three weeks you just sort of took a chance? A. Yes.

Obviously, regular employees with regular jobs do not just "take a chance" of employment on reporting for work. It further appears that Slater worked variously on different shifts, split shifts, and received no pay for holidays such as Labor Day when he did not work—all factors distinguishing his status from that of regular employees. His work card was kept in a rack reserved for extra employees whereas work cards of regular employees were kept in a separate compartment.

From the foregoing it is clear and is found that the contracting parties reasonably regarded Slater as a casual employee subject to the hiring hall provisions of the contract and that he was subject to those provisions. The factual problem remains whether he was dispatched to his job with this Employer as required by the contract. It is clear that he was not

Slater obtained his employment by presenting the Employer with a letter signed by an officer of the Union stating that he might seek work wherever he could find it in the freight industry without working through the hiring hall. This letter may very well have misled the Employer into believing that the Union had waived the requirement that

in seeking *casual* employment Slater be dispatched through regular procedures, but Slater, who had worked out of the hiring hall for some 2 years, knew very well that in his use of this letter he was circumventing regular hiring hall procedures. The letter did not in fact constitute a referral according to the contractual provision relating to casual employees and practices under it, and when an officer of the Union responsible for the application of hiring hall procedures found that Slater was working without proper referrals he called that fact to the attention of the Employer and demanded that the Employer cease to employ Slater as a casual employee except on the basis of proper referrals. The Employer promptly honored the request. It could not have acted otherwise except with a deliberate breach of contract. This action left the Employer free, as it is now, to apply its own judgment and discretion whether to employ Slater as a regular employee.

2. *The Contract*

The Employer is a member of the California Trucking Associations, Inc., herein called the Association, an association of motor truck operators which has, among others, the function of representing its various employer members, including the Respondent Employer, in collective bargaining with representatives of their employees. On about May 4, 1955, the Association executed a contract known as the Master Dry Freight Agreement, with the Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL-CIO, and a number of its affiliated local unions, including the Respondent Union (Local 357). This contract is operative for a period of three years commencing May 1, 1955. It is not disputed that the Association, its employer members and the unions signatory to the contract have at all times material herein given effect to the terms of the contract.

This contract provides:

The Association recognizes the Union as the exclusive representative of the employees covered by this Agreement for collective bargaining. As a condition of employment, after thirty (30) days from the effective date of this Agreement, or after thirty (30) days from the date an employee is hired, whichever is later, all employees covered by this Agreement shall be required to become and remain members of the Union in good standing. New employees shall, when permitted by law, or in case of employers not subject to the National Labor Relations Act, become members of the Union fifteen (15) days from the date of original employment. Casual employees shall, wherever the Union maintains a dispatching service, be employed only on a seniority basis in the Industry whenever such senior employees are available. An available list with seniority status will be kept by the Unions, and employees requested will be dispatched upon call to any employer who is a party to this Agreement. Seniority rating of such employees shall begin with a minimum of three months service in the Industry, irrespective of whether such employee is or is not a member of the Union.

Discharge of any employee by any employer shall be grounds for removal of any employee from seniority status. No casual employee shall be employed by any employer who is a party to this Agreement in violation of seniority status if such employees are available and if the dispatching service for such employees is available. The employer shall first call the Union or the dispatching hall designated by the Union for such help. In the event the employer is notified that such help is not available; or in the event the employees called for do not appear for work at the time designated by the employer, the employer may hire from any other available source.

The sole issue with respect to the contract is whether under it the Employer has surrendered to the Union control of seniority governing the dispatching of casual employees. On the fact of the contract I can find nothing violative of the Act in the language relating to seniority and no contention is made, and no evidence proffered by the Gen-

eral Counsel to show that the Union has in any way discriminated against nonunion members in its application of the seniority provisions of the contract. The General Counsel's authority for his position is *Pacific Intermountain Express Company*, 107 NLRB 837, in which the Board after finding that "the objective standards for determining seniority are derived from information peculiarly within the knowledge of the employer," held:

> We can therefore see no basis for presuming that when an employer delegates to a union the authority to determine the seniority of its employees, or even to settle controversies with respect to seniority, such control will be exercised by the union in a nondiscriminatory manner. Rather, it is to be presumed, we believe, that such delegation is intended to, and in fact will, be used by the union to encourage membership in the union. Accordingly, the inclusion of a bare provision like that in the 1949 contract, that delegates *complete control* over seniority to a union is violative of the Act because it tends to encourage membership in the union. And because we believe that it will similarly tend to encourage membership in the union, we also conclude that the inclusion of a statement, like that in the 1952 contract, that seniority will be determined without regard to union membership is not by itself enough to cure the vice of giving to the union complete control over the settlement of a "controversy" with respect to seniority. (Emphasis supplied.)

It is seen that this decision rests on a presumption that a labor organization which through collective bargaining wins a concession from an employer vesting the former with control of seniority, will exercise such control in a discriminatory manner, and that this in turn will encourage membership in the labor organization. Needless to say, any concession won by a labor organization at the bargaining table may be said to encourage membership in that labor organization and to say that a union is estopped from gaining benefits through collective bargaining which will have the reasonable effect of promoting membership in the

union, would be to make a mockery of the whole bargaining process. Obviously, therefore, the Board has seen some special danger to the rights of employees where a union is permitted to control seniority, even though such control arises out of bargaining agreements. The presumption that if given such control it will be exercised in an unlawful manner, where no evidence exists that it has been exercised in an unlawful manner, is perhaps a bit novel in American jurisprudence but the two courts which have passed on it have approved the doctrine. *N.L.R.B.* v. *Pacific Intermountain Express Company*, 225 F. 2d 343, 36 LRRM 2632 (C.A. 8); *N.L.R.B.* v. *Dallas General Drivers*, No. 15589 (C.A. 5), 37 LRRM 2356. It still may be questioned, without disrespect to either the Board or the courts, whether the presumption, unless it be an irrebuttable one, may have proper application in a situation where, as here, the labor organization involved is not shown to have engaged in discriminatory practices with respect to seniority after more than a year of operations under the contract. There are other grounds, however, on which I would distinguish the cases.

In the case at bar, unlike *Pacific Intermountain Express*, not the Union alone but the Union and the Employer as contracting parties have established a standard in the contract for determining placement on the seniority lists. This standard is unequivocally expressed in the provision that seniority "rating of such employees shall begin with a minimum of three months service in the Industry, irrespective of whether such employee is or is not a member of the Union." Here there is no unilateral determination by the Union as to what persons shall be placed on the seniority list, or the order of their placement.

The standard for removal of employees from the seniority lists is also provided by the contract; namely, the discharge "of any employee by any employer." Now, it can hardly be presumed that the Union controls the discharge of employees at the hands of their employers and therefore

unilaterally determines the standard for removal from seniority lists. Its discretion in removal of employees from the seniority lists is therefore restricted by a circumstance over which it has no control.

Clearly we do not have here a "bare provision" on seniority comparable to that found in the *Pacific Intermountain Express* case, and clearly there is not here such a delegation of "complete control" over seniority to the Union as was found in that case. Nor is seniority made subject to "the rules and regulations of the Union," a provision disapproved by the Board in *Interstate Motor Freight System*, 116 NLRB No. 95. The situation here appears to be much closer to that found in the *Interstate* case relating to a third contract with respect to which no violation was found because in it seniority was spelled out more fully than in the other two contracts found to have contained unlawful seniority provisions, and it did not make the principle of seniority "subject to the rules and regulations of the Union."

The General Counsel's main reliance appears to be the fact that the Union has the ministerial function of compiling and maintaining the seniority lists. True, in most cases where a single union and a single employer are involved in contractual relationships, it is the employer who compiles and maintains the seniority lists, and it is not and could not be presumed that he will exercise this function in a discriminatory manner, even though it be shown that he has the strongest of anti-union biases. There is even some question whether, except in special circumstances, he can be required to furnish his employees' bargaining agent with a copy of such lists as a part of the bargaining process. See *N.L.R.B.* v. *F. W. Woolworth Co.*, (C.A. 9), No. 14577, June 25, 1956; 38 LRRM 2362. Here, however, while the complaint runs against a single union and a single employer, the contract which is under attack is a master labor agreement between the Association representing approximately 1,000 trucking firms, and the Union together with other

affiliated local unions. Bearing in mind that seniority as spelled out in the contract is based on a minimum of three months service in the *industry*, it would hardly be seemly to require this Employer to maintain a seniority list of the entire affected industry. In fact it would be impractical if not impossible for it to do so. And it is this Employer alone and this Union alone that are here charged with unfair labor practices.

The Association doubtless has access to the employment records of all its members, and therefore presumably could compile a list such as is now maintained by the Union, which lists could then be made available to its members, such as the Employer in this case. This could be done, though no doubt at considerable expense and inconvenience, and it has not been done. Perhaps this would be a good idea and a salutary one, but unless we are to earn the appellation of bureaucratic intermeddlers this is not our proper concern unless we can say that the Association's failure to take such action vitiates the contractual provision on seniority. I think, under the circumstances of this case, we can not say that. The contracting parties have seen fit, though collective bargaining, to leave the compilation and maintenance of such lists to the Union, but, as aforestated, the *standards* for determining seniority have been set forth in the contract.

As stated by the General Counsel, the seniority lists maintained by the Union have not been furnished to the Employer or the Association, but this is not to say that they would not be furnished on appropriate request for there is no showing that a request has been made by either. Nor can I see much significance in the fact that neither the Employer nor the Association have intervened in any dispute over seniority arising under the contract, because it is not shown that any dispute over seniority has arisen or has been called to the attention of either. Is this also a fact not in evidence which we are to assume? The fact is that in any dispute arising over seniority, the Employer is not impotent be-

cause it can obtain, independently of the Union, data on the seniority status of employees through the Association, and inasmuch as the standards for establishing and terminating seniority are set up in the contract, it is in position to challenge the Union's disposition of such matters if it is of the opinion that the standards of the contract are not being adhered to. This is a far cry from the "complete control" over seniority accorded the Union in the *Pacific Intermountain Express case*. To presume in this situation that because the Union is empowered to compile and maintain a seniority list in accordance with standards specifically named in the contract, it will violate its contractual obligations with respect to observance of those standards, without any evidence whatever that it has done so, would be to indict labor organizations generally as unfit to undertake contractual obligations on behalf of employees they represent. I would not willingly join in such an indictment.

It will be my recommendation that the complaint be dismissed in its entirety.

Conclusions of Law

1. The operations of the Respondent Employer, described in Section I above, constitute and affect trade, traffic, and commerce among the several States, within the meaning of Section 2 (6) and (7) of the Act.

2. The Respondent Union is a labor organization within the meaning of Section 2 (5) of the Act.

3. The Respondents have not engaged in unfair labor practices as alleged in the complaint.

RECOMMENDED ORDER

Upon the basis of the foregoing findings of fact and conclusions of law, and upon the entire record in the case, it is recommended that the complaint herein be dismissed.

Dated this 9th day of October 1956.

WILLIAM E. SPENCER
Trial Examiner

GENERAL COUNSEL EXHIBIT II
MASTER LABOR AGREEMENT
BETWEEN
CALIFORNIA TRUCKING ASSOCIATIONS, INC.
AND
THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA
(Joint Council of Teamsters No. 42)

This Agreement entered into this 1st day of May, 1955, between California Trucking Associations, Inc., hereinafter referred to as Association, and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and its affiliated Local Unions Nos. 88, 186, 208, 224, 357, 381, 396, 467, 495, 542, 578, 631, 692, 898 and 982, hereinafter collectively referred to as UNION.

. . . . . .

Now, Therefore, It Is Agreed As Follows:

1. The Association recognizes the Union as the exclusive representative of the employees covered by this Agreement for collective bargaining. As a condition of employment, after thirty (30) days from the effective date of this Agreement, or after thirty (30) days from the date an employee is hired, whichever is later, all employees covered by this Agreement shall be required to become and remain members of the Union in good standing. New employees shall, when permitted by law, or in case of employers not subject to the National Labor Relations Act, become members of the Union fifteen (15) days from the date of original employment. Casual employees shall, wherever the Union maintains a dispatching service, be employed only on a seniority basis in the Industry whenever such senior employees are available. An available list with seniority status will be kept by the Unions, and employees requested will be dispatched upon call to any em-

ployer who is a party to this Agreement. Seniority rating of such employees shall begin with a minimum of three months service in the Industry, irrespective of whether such employee is or is not a member of the Union.

Discharge of any employee by any employer shall be grounds for removal of any employee from seniority status. No casual employee shall be employed by any employer who is a party to this Agreement in violation of seniority status if such employees are available and if the dispatching service for such employees is available. The employer shall first call the Union or the dispatching hall designated by the Union for such help. In the event the employer is notified that such help is not available, or in the event the employees called for do not appear for work at the time designated by the employer, the employer may hire from any other available source.

. . . . . .

3. The right is reserved by the members of the Association to discharge any employee for services not deemed by the employer to be satisfactory, and further to assign employees covered by this Agreement to any classification of employment, and to determine how and when freight shall be moved and number of employees necessary for the performance of any particular task or service. No employee shall be discharged or discriminated against because of his membership in the Union or Union activities. The Union shall have the right to investigate the discharge of any employee and may protest any discharge believed by the Union to be unjustified. Any such protest shall be presented to the Association within five (5) days after such discharge. Thereupon the matter shall be investigated by a joint committee composed of three representatives of the Union and three representatives of the Association. The decision of a majority of said joint committee shall be binding upon the employer and employee involved. In the event of the failure of a majority of said committee to

reach a decision, the discharge will remain in effect and no further proceedings will be had in connection with such matter.

4. In the event of the reduction in the number of employees by any member of the Association, employees shall be laid off according to the seniority list. In the event of an increase in the number of employees by a member of the Association, employees previously laid off shall be restored to duty according to their seniority provided the affected employee responds to the call of the employer, which call shall be communicated to the employee at his last known address as filed with the employer, by straight telegram and to the local union by telegraph or telephone, and reports for duty within twenty-four (24) hours from the time of the dispatch of said call. The giving of said aforementioned call shall fulfill the obligation of the employer under the provisions of this Agreement. The Union and the Association shall develop and establish rules for the determination of seniority within and between units, departments, and branches of members of the Association, the preparation and posting of seniority lists, the definition of the types of temporary layoff which will not be affected by this paragraph, and such other matters as may be found necessary for the application of the provisions of this paragraph. Extra work and overtime, insofar as possible, will be assigned on a rotating basis without regard for seniority.

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12. The parties hereto recognize and agree that industrial peace is to be desired at all times in the area covered by this Agreement and to that end it is agreed that for the purpose of adjusting differences, misunderstandings, disputes or controversies arising under the provisions of this Agreement or of any agreements supplemental hereto, as follows:

(a) In the event of any difference, misunderstanding, dispute or controversy, the parties shall exercise

every amicable means to settle or adjust the same, but in the event of their failure so to do, such difference, misunderstanding, dispute, or controversy, shall be submitted to a Board of Arbitration, and the decision of such Board shall be binding upon the parties and their members.

(b) The Board of Arbitration shall consist of one member selected by the Association and one member selected by the Union, and a disinterested third member to be selected by the two members selected by the parties in the event that the first two members cannot agree upon a decision. In the event that the two members selected by the parties fail to agree upon a third member within ten (10) days, such third member shall be designated by the American Arbitration Association. In case there are three members of the Board of Arbitration selected as above-mentioned, a decision concurred in by any two of them shall constitute an award of the Board.

(c) Any matter to be considered by the Board of Arbitration shall be submitted to it in writing by the party originally requesting arbitration. The Board of Arbitration shall meet within ten (10) days thereafter, at which time the parties shall present their evidence. Unless an extension is mutually agreed upon by the parties, the Board of Arbitration shall render its decision in writing within twenty (20) days after final submission of the matter to it.

(d) The expense of the Board of Arbitartion shall be borne equally by the parties hereto.

(e) Questions as to the amount of money due any employee under an existing wage scale, not involving any interpretation of this agreement or any agreement supplemental hereto, need not be submitted to arbitration. Complaints involving only the amount of money due an employee shall be submitted to the Association for investigation and adjustment and every amicable means shall be exercised to effect a settlement or adjustment of such complaint. If any such complaint shall not have been adjusted or settled to the satisfaction of the parties concerned within five (5) days, exclusive of Saturdays, Sun-

days, and holidays, of the submission of the complaint to the Association, the Union shall have the right to take such action against the member of the Association involved as it may deem proper. If such complaint shall not be adjusted or settled to the satisfaction of all parties concerned, the member of the Association against whom such complaint is made may pay under protest the full amount of money claimed to be due and thereupon the Association may refer such matter to the Board of Arbitration for determination.

• • • • • • • • • • •

17. The term of this Agreement shall be three years commencing May 1, 1955.

IN WITNESS WHEREOF the parties have executed this Agreement as of the date first above written.

CALIFORNIA TRUCKING ASSOCIATIONS, INC.

H. B. HOLT, *President*
J. J. DEVINE, *Secretary*

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA

PAUL D. JONES
Joint Council of Teamsters No. 42
RICHARD W. FLYNN
Local Union No. 88
ROBERT D. USSERY
Local Union No. 186
JOHN W. FILIPOFF
Local Union No. 208
H. E. WOXBERG
by W. F. DYKES
Local Union No. 224
A. W. BOCK
Local Union No. 357
WALTER A. CALLAHAN
Local Union No. 381
FRANK J. MATULA, JR.
Local Union No. 396
STEWART B. MASON
Local Union No. 467
FRANK A. HATFIELD
Local Union No. 495
J. P. POTEET
Local Union No. 542
HOWARD L. BARKER
Local Union No. 578
WM. F. CARTER
Local Union No. 631
TED MERRILL
Local Union No. 692
RICHARD P. GIBBONS
Local Union No. 898
L. O. WILSON
Local Union No. 982

GENERAL COUNCIL EXHIBIT NO. 4

JOHN M. ANNAND
INTERNATIONAL REPRESENTATIVE
948 SOUTH UNION AVENUE
LOS ANGELES 14, CALIFORNIA
TELEPHONE: Dunkirk 7-7961

INTERNATIONAL BROTHERHOOD OF TEAMSTERS
CHAUFFEURS, WAREHOUSEMEN AND HELPERS

JULY 7, 1938

MR. LESTER SLATER,
922 No. EUCALYPTUS AVE.,
INGLEWOOD, CALIFORNIA.

DEAR SIR AND BROTHER:

MRS. CODY'S LETTER TO OUR INTERNATIONAL PRESIDENT, DAVE BECK, WAS REFERRED TO ME. I HAVE BEEN INFORMED BY LOCAL UNION 357 THAT YOU DO NOT DESIRE STEADY WORK, AND THAT FOR THIS REASON THEY HAVE FOUND IT SOMEWHAT EMBARRASSING TO DISPATCH YOU FROM THE HIRING HALL. HOWEVER, THEY INFORMED ME THAT YOUR CARD IS IN ORDER, AND THAT YOU MAY SEEK WORK WHEREVER YOU CAN FIND IT IN THE FREIGHT INDUSTRY WITHOUT WORKING THROUGH THE HIRING HALL.

FRATERNALLY YOURS,
John M. Annand.
JOHN M. ANNAND.

JMA:ED
(ENCLOSURES)

OUCR.

No. 11

Mrs Cody
922 No Eucalyptus ave
Inglewood Calif
Phone CR 1-5394

Sister Slater will take a steady job any time, I know this to be true. Mrs. Cody.

Once I read in the [illegible] national Graduate Book something
Great President said in his letter to people.
Dave Bakk [illegible] To help a man when he is down even
if he aint [illegible] more. [illegible]

[fol. 69] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,794

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

Petition for Review of Order of the National Labor Relations Board and Cross-Application for Enforcement.

OPINION—Decided February 18, 1960

Mr. Bernard Dunau, with whom Messrs. Herbert S. Thatcher and David Previant were on the brief, for petitioner.

Miss Rosanna A. Blake, Attorney, National Labor Relations Board, with whom Messrs. Jerome D. Fenton, General Counsel, National Labor Relations Board at the time the brief was filed, Thomas J. McDermott, Associate General Counsel, National Labor Relations Board, and Marcel Mallet-Prevost, Assistant General Counsel, National Labor Relations Board, and Mrs. Betty Jane Southard, Attorney, National Labor Relations Board, were on the brief, for respondent.

Before Edgerton, Wilbur K. Miller and Danaher, Circuit Judges.

[fol. 70] Per Curiam: Local 357 of the Teamsters union asks us to review and set aside, and the National Labor Relations Board asks us to enforce, an order of the latter which held an exclusive hiring hall agreement constitutes discrimination which encourages union membership within the meaning of Sections 8(a)(3) and (1) and 8(b)(2)

and (1)(A) of the National Labor Relations Act as amended, 61 Stat. 136, 65 Stat. 601, 29 U. S. C. § 158. The order directed the respondent employer, Los Angeles-Seattle Motor Express, and the union to cease and desist from performing, maintaining or otherwise giving effect to the condemned hiring hall agreement and to take certain affirmative action which the Board found would effectuate the purposes of the Act.

Among the affirmative acts which the order required of the union and employer jointly was to make whole one Lester H. Slater for any loss he may have suffered from the discrimination which the Board held had been practiced against him under the hiring hall agreement; and to reimburse all casual employees for the initiation fees and dues which, the Board said, had been "exacted from them as the price of their employment."

We think the Board's order is correct except that it goes too far in directing reimbursement of the dues and fees paid to the union by all casual employees. *National Labor Relations Board* v. *American Dredging Co.*, —— F. (2d) —— (3rd Cir. Jan. 8, 1960).[1] The order should be modified to confine the reimbursement feature to Slater alone. As so modified, the Board's order will be enforced.

It is so ordered.

[fol. 71] EDGERTON, *Circuit Judge, dissenting:* The Board rightly says "The basic issue in this case is the propriety of the Board's finding that the Union's exclusive hiring hall agreement violated the Act on its face." I think this finding is wrong and the order should be set aside.

The court appears to hold that an exclusive hiring-hall agreement is necessarily unlawful. My impression is that "The hiring hall is legal and has always been held so." *N.L.R.B.* v. *Mountain Pacific Chapter of Associated General Contractors, Inc.*, 270 F. 2d 425, 429 (9th Cir. 1959). An "agreement that hiring of employees be done only

[1] We have considered the opinion of the Seventh Circuit in *National Labor Relations Board* v. *Local 60, et al.*, —— F. (2d) —— (Jan. 22, 1960), but are constrained to the view that the Third Circuit opinion more aptly applies to the problem presented on the record before us.

through a particular union's offices does not violate the Act absent evidence that the union unlawfully discriminated in supplying the company with personnel.' 95 N.L.R.B. at 435." *N.L.R.B.* v. *Swinerton*, 202 F. 2d 511, 514 (9th Cir.), *cert. denied* 346 U.S. 814. "'The factor in a hiring-hall arrangement which makes the device an unfair labor practice is the agreement to hire *only* union members referred to the employer.' Del E. Webb Construction Co. v. N.L.R.B., 8 Cir., 1952, 196 F. 2d 841, 845." *Eichleay Corp.* v. *N.L.R.B.*, 206 F. 2d 799, 803 (3d Cir. 1953). The present hiring-hall arrangement expressly negatives any such agreement, by requiring employment to be "only on a seniority basis" irrespective of whether the "employee is or is not a member of the Union." Without violating this agreement, the employer cannot discriminate "in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership" in the union, in violation of 8(a)(3) of the Labor Management Relations Act,[1] and the union cannot "cause or attempt to cause an employer to discriminate against an employee in violation of" that section.[2]

[fol. 72] The agreement does not contain the language the Board required in the *Mountain Pacific* case, 119 N.L.R.B. 883, 897, but this does not make it unlawful. *N.L.R.B.* v. *Mountain Pacific Chapter of Associated General Contractors, Inc.*, 270 F. 2d 425, 431 (9th Cir.). "Within the area in which collective bargaining was required, Congress was not concerned with the substantive terms upon which the parties agreed." *Local 24, International Brotherhood of Teamsters etc.* v. *Oliver*, 358 U.S. 283, 295. The possibility that the arrangement may at some future time lead to unlawful discrimination does not invalidate it. *Shuttlesworth* v. *Board of Education*, 358 U.S. 101, *affirming* 162 F. Supp. 372, 384.

The court upholds the Board's finding that the discharge of employee Slater resulted from the hiring provisions of the contract and was discriminatory. Slater

[1] 61 Stat. 140 (1947), as amended, 29 U.S.C. § 158(a)(3) (1958).

[2] § 158(b)(2).

had not obtained or sought employment through the hiring hall. I think his discharge for this reason did not discriminate against him or violate the Act. To interpret the Act as "furnishing statutory protection to employees who choose to violate valid provisions of labor-management contracts" would not be "consistent with the underlying purpose of the Act to promote . . . collective bargaining agreements . . ." *N.L.R.B.* v. *Furriers Joint Council*, 224 F. 2d 78, 80 (2d Cir.). Slater was a member of the Union in good standing. I cannot see that his discharge for failing to comply with an agreement between the Union and the employer encourages union membership.

[fol. 73] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,794

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD, Respondent.

On Petition for Review of Order of the National Labor Relations Board and Cross-Petition for Enforcement.

Before: Edgerton, Wilbur K. Miller and Danaher, Circuit Judges.

JUDGMENT—February 18, 1960

This case came on to be heard on the record from the National Labor Relations Board, and was argued by counsel.

On Consideration Whereof, It is ordered and adjudged by this court that the order of the National Labor Relations

Board on review in this case be modified as indicated in the opinion of this court and, as so modified, will be enforced.

Pursuant to Rule 38(1) the National Labor Relations Board shall within 10 days hereof serve and file a proposed enforcement decree consistent with the opinion and judgment of this court.

Per Curiam.

Dated: February 18, 1960.

Separate dissenting opinion by Circuit Judge Edgerton.

[fol. 74] [File endorsement omitted]

IN UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 14,794

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD; Respondent.

DECREE ENFORCING, AS MODIFIED, AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD—March 10, 1960

Before: Edgerton, Wilbur K. Miller and Danaher, Circuit Judges.

This cause came on to be heard upon the petition of Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America to review an order of the National Labor Relations Board dated October 31, 1958, and upon the Board's cross-application to enforce said order. The Court heard argument of respective counsel on September 16, 1959, and has considered the briefs and transcript of record filed in this cause. On February 18, 1960, the Court being fully advised in the

premises, handed down its decision granting enforcement of the Board's order as modified and granting in part and denying in part the petition to review. In conformity therewith, it is hereby

Ordered, Adjudged and Decreed by the Court, that the petitioning Union, Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, its officers, representatives, and agents, shall:

(a) Cease and desist from:

(1) Performing, maintaining, or otherwise giving effect to provisions of any agreement with Los Angeles-Seattle Motor Express, Incorporated (hereinafter called the Company), or any other employer within the meaning [fol. 75] of the National Labor Relations Act (hereinafter called the Act), which unlawfully conditions the hire of applicants for employment, or the retention of employees in employment with any employer, upon referral or clearance by the Petitioner Union, except as authorized by the proviso to Section 8 (a) (3) of the Act;

(2) Causing or attempting to cause the Company, or any other employer, to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act;

(3) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act;

(b) Take the following affirmative action, which the Board has found will effectuate the policies of the Act:

(1) Jointly and severally with the Company, make whole Lester H. Slater for any loss of pay he may have suffered by reason of the discrimination against him, as provided in the Section of the National Labor Relations Board's Decision and Order, dated October 31, 1958, entitled "The Remedy";

(2) Jointly and severally with the Company, reimburse Lester H. Slater for monies illegally exacted from

him in the manner and to the extent set forth in the aforesaid Decision and Order.

(3) Notify Lester H. Slater and the Company, in writing, that it has no objection to Slater's employment;

(4) Post at its offices, in conspicuous places, including all places where notices to employees or prospective employees are customarily posted, copies of the notice attached hereto as Appendix A. Copies of said notice, to be furnished by the Regional Director of the National Labor Relations Board for the Twenty-first Region (Los Angeles, California), shall, after being duly signed by Petitioner's representative, be posted immediately upon receipt thereof and maintained by the Petitioner for sixty (60) consecutive days thereafter. Reasonable steps shall be taken by the Petitioner to insure that said notice shall not be altered, defaced, or covered by any other material;

[fol. 76] (4) Notify the aforesaid Regional Director, in writing, within ten (10) days from the date of this decree, what steps it has taken to comply herewith.

Wilbur K. Miller, Judge, United States Court of Appeals for the District of Columbia Circuit,
John A. Danaher, Judge, United States Court of Appeals for the District of Columbia Circuit.

Circuit Judge Edgerton dissents.

Dated: March 10, 1960.

[fol. 77]

APPENDIX A TO DECREE

NOTICE

TO ALL EMPLOYEES OF AND APPLICANTS FOR EMPLOYMENT WITH LOS ANGELES-SEATTLE MOTOR EXPRESS, INCORPORATED

PURSUANT TO

a Decree of the United States Court of Appeals enforcing, as modified, an Order of the National Labor Relations Board, and in order to effectuate the policies of the National

Labor Relations Act, as amended, we hereby notify you that:

WE WILL NOT perform, maintain, or otherwise give effect to the provisions of any agreement with Los Angeles-Seattle Motor Express Incorporated, or with any other employer, which unlawfully conditions the hire of applicants for employment, or the retention of employees in employment with any employer, upon referral or clearance by any labor organization, except as authorized by Section 8 (a) (3) of the Act.

WE WILL NOT cause or attempt to cause the above-named employer, or any other employer, to discriminate against employees or applicants for employment in violation of Section 8 (a) (3) of the Act.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act, except in a manner permitted by Section 8 (a) (3) of the Act.

WE WILL reimburse Lester H. Slater for the initiation fees and dues he was illegally required to pay to our union as a result of the unlawful hiring provisions in our contract with the aforementioned company.

WE WILL make whole Lester H. Slater for any loss of pay suffered as a result of the discrimination against him.

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 357
(*Labor Organization*)

Dated ..... By .....
(*Representative*) (*Title*)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

[fol. 79] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 80]

SUPREME COURT OF THE UNITED STATES

No. 825, October Term, 1959

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

ORDER ALLOWING CERTIORARI—June 27, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 929 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fol. 81]

SUPREME COURT OF THE UNITED STATES

No. 929, October Term, 1959

NATIONAL LABOR RELATIONS BOARD, Petitioner,

vs.

LOCAL 357, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

ORDER ALLOWING CERTIORARI—June 27, 1960

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is consolidated with No. 825 and a total of two hours is allowed for oral argument.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.